

Section III: Affording Students with Disabilities and Their Parents All the Rights and Procedural Safeguards Required by Federal and State Law and Regulations

The New York City Department of Education (NYCDOE) is committed to taking a system-wide approach to ensure students with disabilities receive services in a timely fashion and that families are empowered to support their children in the best way possible. This includes working with families who believe that the NYCDOE has failed to provide their children with disabilities with a free appropriate public education (FAPE) and are pursuing their due process rights through the impartial hearing process.

Under the Chancellor's new leadership structure for the NYCDOE, the Impartial Hearing Office was transferred from the Division of Finance to the Division of School Planning and Development (DSPD). The School Planning and Development leadership is committed to developing strong systems and proper oversight within the office so that there are no delays or gaps when completing the work of the office.

This section provides information about the measurable updates the NYCDOE has made to improve the impartial hearing process by increasing resources, improving facilities, and ensuring regular, prompt payments to Impartial Hearing Officers.

In response to the May 2019 compliance assurance plan (CAP), significant enhancements have been made to improve the impartial hearing process in New York City. These actions were specifically responsive to the directives from the compliance assurance plan:

1. Increase in the number of staffing resources to New York City Impartial Hearing Office (NYCIHO).
2. Procurement of additional hearing space and improve the existing hearing space in appearance, ventilation and amenities, including a separate area for NYCDOE reassigned teachers.
3. Address how NYCDOE will ensure that the allocation of resources is adequate to ensure regular, prompt payment to Impartial Hearing Officers (IHOs).

1. Increase the Number of Impartial Hearing Office Staffing Resources

NYCDOE's Division of School Planning and Development completed an analysis of the Impartial Hearing Office and its organizational structure and staffing resources to address the increase in volume of cases, issues with delays in providing data to NYSED, and executing other operational functions.

Workflow Analysis:

The NYCDOE conducted a workflow analysis and personnel audit to determine the gaps in functions necessary to fulfill obligations and best meet the needs of families. The main findings from this analysis are as follows:

- The office was understaffed and unable to meet the demands of the increased volume of cases - leaving a significant gap in resources including operations, data management, and mediation services.

- The increase in volume of impartial hearing cases resulted in over 82% of the current staff dedicating work time to data processing related to cases.
- The high level of use of temporary staff rather than full-time staff impacted the office's ability to consistently meet timelines and operational milestones.

New Model of Support:

To meet the demands of the office and address the increase in volume of cases, NYCDOE is immediately adding three full-time employees to strengthen the office's capacity and reduce the reliance on temporary staff. This will bring the total full-time staff level to 20 team members. Furthermore, the DOE has developed a proposed plan to increase capacity in the areas of 1) mediation support, 2) finance and operations, 3) data and technology management, 4) family support, and 5) case processing. This organizational redesign will make processes more efficient and build capacity in the office to more effectively respond to the high demand for impartial hearings. This request is under review by DOE leadership as part of a comprehensive review of resource needs associated with the CAP.

Metric: Identify resources to increase staffing in NYCISO

Timeline: 06/03/2019

Status: In process

2. Procure additional hearing space and improve the existing hearing space in appearance, ventilation and amenities, including a separate area for NYCDOE reassigned teachers.

Facilities:

Chancellor Carranza visited the Impartial Hearing Office to complete a walkthrough and personally evaluate the physical space and its needs. The NYCDOE has since completed a comprehensive plan for facilities improvements to create an environment that is more conducive to supporting families' needs during the impartial hearing process.

NYCDOE has taken many steps to make the necessary structural improvements to the space to ensure it is appropriate for holding impartial hearings in a comfortable, professional and confidential manner. Below is the plan NYCDOE implemented and closely monitored to address the facilities improvements. Issues have been addressed regarding sound bleeding, temperature regulation, air conditioning issues, lack of private space for conversations, inadequate space for waiting, non-NYCDOE staff member accessibility to electrical outlets, computers, printers and WiFi, lack of signage for visitors, and mitigating the overall unkempt and uninviting nature of the space. Please see below for more detailed information.

Facilities Phase I

#	Task	Status Update as of 6/03/2019
1	Update phone system	Complete
2	Maintain a tidy office space	Complete
3	Hang student artwork on hearing room and cafeteria walls	Complete
4	Clarify in written documentation that unlocked documents are of an administrative (not confidential) nature	Complete
5	Station NYCDOE reassigned teachers outside of NYCISO	Complete
6	Renovate three spaces for confidential conversations	Complete
7	Soundproof rooms via insulation and sheet rocking	Complete
8	Ensure security desk is staffed	Complete
9	Update office signage	Complete
10	Install computer and copy station and establish visitor access	Complete
11	Install new air conditioners in five rooms	Complete
12	Change valves in 10 rooms to allow for proper ventilation	Complete
13	Install new furniture in waiting room	Complete
14	Paint 10 hearing rooms and cafeteria off-white	Complete

Facilities Phase II

#	Task	Status Update as of 6/03/2019
1	Replace carpeting with wood flooring in all hearing rooms	Ordered Estimated installation date is scheduled for week of 6/10/2019
2	Install wire molding to conceal wiring on floors and ameliorate trip hazard	Ordered Estimated installation date is scheduled for week of 6/10/2019

3	Display hearing room availability via electronic monitors in cafeteria and waiting areas	Complete
4	Install window shades in hearing offices	Complete

3. Address how it will ensure that allocation of resources is adequate to ensure regular, prompt payment to IHOs.

Payment of Impartial Hearing Officers:

There had previously been delays in payments to Impartial Hearing Officers due to a lack of an organized system to track payment status. The Division of School Planning and Development Leadership team instituted systems to address delays in payments to Impartial Hearing Officers. While there were previously delays of up to three months, Impartial Hearing Officers are now paid within a two week cycle after submitting completed invoices. Impartial Hearing Officers receive a communication on a weekly basis regarding their payment status.

While a lack of resources was not the cause of the delays in payments to IHOs, the NYCDOE also completed a financial trends analysis with the Division of Finance to ensure that the funding allocated was sufficient for the remainder of the year given the increase in the volume of cases. NYCDOE increased the budget of the Impartial Hearing Office by \$3.4M and has baselined this amount into future years.

Metric: Implement a system to monitor timely payment to Impartial Hearing Officers

Timeline: January 2020

Status: Complete

NYCDOE will continue to monitor implementation of the improvements made to staffing resources, physical space and the process by which Impartial Hearing Officers receive compensation in a timely manner as outlined in the compliance assurance plan. On June 17, 2019, NYCDOE will submit a comprehensive corrective action plan to outline how NYCDOE is providing students with disabilities and their parents all of the rights and procedural safeguards required by Federal and State laws and regulations. NYCDOE appreciates the State's continued collaboration and thought partnership around IHO recruitment and appointment as NYCDOE makes these important structural changes to the NYC IHO.

Compliance Assurance Plan Section			Section III: Affording Students with Disabilities and Their Parents All the Rights and Procedural Safeguards Required by Federal and State Law and Regulations.						
Compliance Assurance Plan Subcategory			Due Process	Action Steps that are shared in gray are from the NYSED issued Compliance Assurance Plan					
ID	Area(s) of non-compliance being Addressed	Action Steps	Implementation Timeline	NYCDOE office and specific NYCDOE staff responsible					
DP1	Due Process	Provide a plan to revise its IHO compensation policy, subject to NYSED approval. DOE has begun the process to analyze the current compensation policy and develop a draft revision. During this process, DOE will engage with Impartial Hearing Officers to ensure their perspective is incorporated into the draft policy. DOE will also engage with other school districts. Further action on a revised compensation policy would be subject to resource availability in the DOE.	Revision is in process. Working draft to be completed by 08/16/2019	NYCDOE Division of School Planning and Development (Chief Operating Officer; Impartial Hearing Office Leadership)					
DP2	Due Process	Immediate action steps to address each noncompliance item which must sufficiently describe NYCDOE efforts, provide an implementation timeline, and include measurable goals and objectives expected to be achieved.	Completed, this document is the action plan	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant, Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy; Director of Performance Management); Office of General Counsel (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP3	Due Process	Description of how NYCDOE plans to monitor its progress of the corrective action plan. NYCDOE will continue to work closely with NYSED and develop a working group to provide updates.	See progress monitoring description tab; working group to develop strategies and action steps to increase the number of impartial hearing officers.	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant); Special Education Office (Executive Director, Policy; Director of Performance Management); Office of General Counsel (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP4	Due Process	Identification of NYCDOE office and specific NYCDOE staff responsible for the implementation of each step/action item included in the corrective action plan.	See column titled "NYCDOE office and specific NYCDOE staff responsible"	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant, Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy; Director of Performance Management); Office of General Counsel, Office of General Counsel (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP5	Due Process	Process by which the corrective action plan will be adjusted and/or amended, with NYSED approval.	See "Progress Monitoring Description" tab	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant); Special Education Office (Executive Director, Policy; Director of Performance Management); Office of General Counsel, Office of General Counsel (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP6	Due Process	With respect to failure to maintain a functioning due process system, the corrective action plan must include, at a minimum, the following additional action steps: a. Root cause analysis of the specific reasons for due process requests, including, but not limited to, the volume of cases in which NYCDOE concedes its failure to provide FAPE and why it does not or is unable to provide FAPE, and whether those cases should be resolved through settlement processes, broken down by community school district.	7/31/2019	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant; Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy; Director of Performance Management); Office of General Counsel (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP7	Due Process	b. How it will increase the use of mediation and IEP facilitation	With regard to increased use of mediation, see DP7a-DP7g. With regard to increased use of IEP facilitation, NYSED has a limited number of trained IEP facilitators, and NYCDOE is awaiting NYSED confirmation that the IEP facilitation program will be available beyond August 31, 2019. NYCDOE will consider further publicizing the opportunity for IEP facilitation based on NYSED's capacity to support requests for IEP facilitation. The implementation is pending available resources in the NYCDOE.	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant; Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy; Director of Performance Management); Office of General Counsel (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP7a	Due Process	DOE will participate in a working group with New York State Dispute Resolution Association, the dispute resolution centers serving New York City, and parent advocates in order to increase the use of mediation citywide. DOE will take additional action steps as determined in collaboration with the working group as well as NYSED.	Ongoing, working group held first meeting on 5/17/2019	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant; Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy)					
DP7b	Due Process	DOE website will make clear the benefits of mediation and provide the contact information for the mediation centers.	Completed. See https://www.schools.nyc.gov/special-education/help/resolving-issues	NYCDOE Division of School Planning and Development (Impartial Hearing Office Leadership); NYCDOE Special Education Office (Executive Director, Policy)					
DP7c	Due Process	NYCDOE will devote resources towards mediation in the Impartial Hearing Office to serve as a resource to parents and families.	9/27/2019	NYCDOE Division of School Planning and Development (Chief Operating Officer; Impartial Hearing Office Leadership); Chief Financial Officer					
DP7d	Due Process	DOE will create professional learning materials for staff who participate in mediations	10/14/2019; NYCDOE will work with the New York Peace Institute to adopt existing professional learning materials	NYCDOE Division of School Planning and Development (Chief Operating Officer; Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy; Director of Performance Management; Executive Director, CSEs)					
DP7e	Due Process	DOE will arrange for training of DOE staff regarding the benefits of mediation	10/14/2019; NYCDOE will work with the New York Peace Institute to adopt existing trainings for staff	NYCDOE Division of School Planning and Development (Chief Operating Officer; Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy; Director of Performance Management; Executive Director, CSEs)					
DP7f	Due Process	DOE will work with the Mediation Working Group to develop a single mediation request form that can be used in all Dispute Resolution Centers in New York City for special education mediations	12/31/2019	NYCDOE Division of School Planning and Development (Chief Operating Officer; Impartial Hearing Office Leadership); Special Education Office (Executive Director, Policy)					
DP7g	Due Process	DOE will continue to instruct parents that they may directly reach out to dispute resolution centers to request mediation. The members of the Mediation Working Group (including parent advocates, New York State Dispute Resolution Association, and the dispute resolution centers serving New York City) believe this increases parents' comfort in requesting mediation and reduces barriers to requesting mediation.	Completed - no action will be taken	NYCDOE Division of School Planning and Development (Impartial Hearing Office Leadership)					

DP8	Due Process	c. How it will reduce its volume of due process impartial hearing requests	NYCDOE cannot control the volume of due process impartial hearing requests. To do so would mean unlawfully restricting or deterring parents from exercising their due process rights under the IDEA and NYS Education Law. For additional actions which NYCDOE will take to attempt to reduce the volume of due process requests, see DP7, DP7a-DP7g, SATE9-SATE19, SAPS1-SAPS12, SAPS23-SAPS28, CS12-CS23, and others. NYCDOE may update these actions, stands as a deadline on the Upon implementation of revised compensation policy.	NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant); Special Education Office (Executive Director, Policy, Director of Performance Management); Office of General Counsel, Special Education Unit (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP9	Due Process	d. Eliminate NYCDOE's role in processing and distributing hearing decisions for IHOs. IHOs will be responsible for completing, dating, redacting, and sending their own decisions. This specific change will be made in alignment with the updated Impartial Hearing Officer compensation policy revision. Note: compensation policy revision is pending available resources in the NYCDOE.		NYCDOE Division of School Planning and Development (Chief Operating Officer; Special Assistant; Impartial Hearing Office Leadership)					
DP10	Due Process	e. Ensure IHO availability before appointment. If within 24 hours, an IHO fails to respond or is unreachable after reasonable efforts by NYCDOE (which must be documented), each successive IHO whose name appears next on the rotational appointment list shall be offered appointment until such appointment is accepted.	7/15/2019; DOE to submit proposed Impartial Hearing System appointment changes to NYSED. In order to complete this action item NYSED must appoint additional impartial hearing officers.	NYCDOE Division of School Planning and Development (Chief Operating Officer; Impartial Hearing Office Leadership)					
DP11	Due Process	f. Ensure uncontested pendency matters are not brought before IHOs.	7/1/2020 - pending resource availability in the DOE.	Special Education Office (Executive Director, Policy, Director of Performance Management); Office of General Counsel, Special Education Unit (Executive Deputy Counsel; Director, Special Education Unit; Managing Attorney, Special Projects, Special Education Unit)					
DP12	Due Process	g. Ensure that staff representing NYCDOE at due process hearings are authorized to enter into settlement or may do so subject to approval, which approval will take no longer than 30 days after request for approval, which request will be made no later than 5 days after agreement has been reached.	NYCDOE is subject to the City of New York City Charter § 93(l), which provides that only the New York City Comptroller may settle claims against or on behalf of the City where there is a monetary component to the settlement terms. The DOE is therefore prohibited from entering into settlements for monetary relief as directed by paragraph (g). With respect to settlements for non-monetary relief, this provision will be implemented by 12/31/2019.						
DP13	Due Process	7. With respect to PWN, the corrective action plan must include, at a minimum, the following additional action steps: a. Administrative procedures must be instituted to ensure that all PWNs are provided to parents on the State's mandatory PWN form, including documentation of the directive to all CSEs, CPSEs, and Subcommittees requiring the use of the State's mandatory form.	Timeline pending; based on schedule to be provided for DP15	Special Education Office (Executive Director, Policy, Director of Performance Management)					
DP14	Due Process	b. Administrative procedures must be instituted to ensure that PWN is issued within a reasonable time before NYCDOE proposes to or refuses to initiate or change the identification, evaluation, educational placement of students, or the provision of FAPE to students.	Timeline pending; based on schedule to be provided for DP15	Special Education Office (Executive Director, Policy, Director of Performance Management)					
DP15	Due Process	c. A schedule for the updates to SESIS to ensure that all generated PWNs are in compliance with 8 NYCRR 200.5(a); and	8/30/2019	Special Education Office (Executive Director, Policy, Director of Performance Management)					
DP16	Due Process	d. A schedule and supporting documentation of the Inclusive Schools Learning Collaborative professional training activities provided to all staff responsible for the issuance of the prior written notices.	Timeline pending; based on schedule to be provided for DP15	Special Education Office (Executive Director, Policy, Director of Performance Management)					